IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6659 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH H DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6659 of 1999

MR HJ NANAVATI for Petitioner No. 1

MS REETA CHANDARANA, AGP, for Respondent No. 1

MR TEJAS BAROT FOR M/S TRIVEDI & GUPTA for Respondent No. 2

MR MP PRAJAPATI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged

the seniority list dated 11.9.98 (Annexure G to the petition) showing the respondent No.3 as having been appointed with effect from 1.9.79 as illegal, arbitrary and discriminatory.

2. Short facts leading to the present petition are that the petitioner is a direct recruit in the respondent No.2, Gujarat Tourism Corporation Limited (hereinafter to be referred as the "said Corporation"). The petitioner was directly recruited by the order dated 7.1.83 as a Clerk initially on probation for a period of six months. It is not in dispute that the petitioner was confirmed in service in due course of time and later on vide order dated 28.1.88, he was promoted to the post of Administrative Assistant.

3. The petitioner has stated in the petition that the respondent No.2 Corporation was established in the year 1978 and initially the posts in the Corporation were held by the State Government servants working on deputation. It appears that the State Government servants who were working with the said Corporation on deputation were given an option circulated by its circular dated 10th May 1979 whether to opt for absorption on permanent basis with the Corporation from 1.9.79 or whether to revert back to the State Government from the said date. Large number of Government servants working as deputationists with the respondent No.2 agreed for permanent absorption as per the said option form. It is not in dispute that the respondent No.3 at that time did not opt for being absorbed in the Corporation, but opted for being reverted back to the Government service.

4. It is also not in dispute that pursuant to the said exercise of calling for option for absorption, the State Government prepared a list of persons found eligible and suitable for being absorbed in the Corporation and eventually by a resolution dated 23.5.80, the Government permitted absorption of the said persons in the Corporation and the deputationists were formally ordered to be absorbed in the services of the Corporation from the date on which the order was received by the Corporation. Since the Corporation assigned the seniority to these erstwhile deputationists from the date of 1st June 1980 when the order of their absorption was actually received, some of the aggrieved persons approached this High Court by filing Special Civil Application No.2474 of 1983. Their contention before the High Court was that their seniority should be reckoned from 1.9.78 when they were sent on deputation to the Corporation. On the other hand, the Corporation had put

up a case before the High Court that the deputationists would be entitled to count the seniority only from 1st June 1980, i.e. the date on which the order of the Government dated 23rd May, 1980 would have reached the Corporation. The said Special Civil Application No.2474/83 came to be decided by the judgment dated 22nd January 1997 and the learned single Judge after taking into account all the factual aspects of the matter was pleased to come to the conclusion that though the Government passed actual order of absorption of the deputationists in the Corporation on 23rd May 1980, the employees were ordered to be absorbed with effect from 1.9.79. The Court also took notice of the fact that in the option form given to the deputationists itself, it was indicated that those who opt for absorption on permanent basis in the services of the Corporation will be absorbed from 1.9.79. In light of the above facts, the learned single Judge was pleased to come to the following conclusion in the said decision:

> "13. However, I do not find any justification in the action of the Corporation to count the services of the petitioners for the purpose of seniority etc. from 1.6.1980. The Government has passed the order for the appointment of petitioners on 23rd May 1980 and that order might have reached to the Corporation on 1st June 1980, but the petitioners were ordered to be absorbed from 1.9.1979. The date of order is not relevant, but the date on which the petitioners were ordered to be absorbed is relevant. The Corporation has decided to absorb the petitioners from 1.7.1979. The petitioners have given the option of their absorption from 1.9.1979."

5. From the above discussion, it can be seen that the learned Judge was pleased to accept partially the request of the petitioners therein and was pleased to find that the deputationists would be entitled to count their seniority from 1.9.79. However, with respect to the claim of the deputationists to count the seniority from any date anterior to 1.9.79, the learned Judge did not find any justification to grant such a prayer. In conclusion, the learned Judge was pleased to reject the request of the petitioners therein for counting their seniority from 1.9.78, however, was pleased to direct that seniority shall be reckoned from 1.9.79.

6. It is not in dispute that the respondent No.3 herein had opted for being repatriated to the Government service in 1979 when the other deputationists had opted

for being absorbed permanently in the Corporation. Obviously, therefore, the respondent No.3 herein was not directed to be absorbed by the order dated 23rd May 1980 passed by the Government. From the further affidavit filed by the respondent No.3 on 5th October, 2004, it can be seen that on 14.5.80, the Corporation indicated to the respondent No.3 that though he has indicated his desire for being repatriated to the Government service, it is possible that if the post on which he was working in the Government is no longer available and he may have to be terminated from service. The counsel for the respondent No.2 also made available to the Court the application dated 29th May 1980 made by the respondent No.3 herein pursuant to the said communication of the respondent dated 14.5.80 indicating his desire to be absorbed in the services of the Corporation. Thus, for the first time on 29.5.80, the respondent No.3 herein indicated that he would be willing to be absorbed permanently in the services of the Corporation. It is not in dispute that eventually by resolution dated 1.2.84, the Government decided to permit 28 employees mentioned in the list accompanied with the resolution to be permanently absorbed in the Corporation and pursuant to this resolution of the Government, the Corporation also passed order dated 2.3.84 absorbing all these 28 employees in the services of the Corporation with effect from 1.2.84. It is not in dispute that the name of the respondent No.3 figures in the list of 28 persons and thus the respondent No.3 stood permanently absorbed in the Corporation's service with effect from 1.2.84.

7. It is the case of the petitioner and about which there is no serious dispute that thereafter, respondent No.2 prepared the seniority list and circulated the same on 11.9.98. In the said circular dated 11.9.98, though there is reference to the earlier draft seniority list of 21.5.97, it appears that the new seniority list was published on 11.9.98 on account of certain changes required to be incorporated in the seniority list of the post of Junior Clerk-cum-Typist. In the said circular dated 11.9.98 it was indicated that if any person is aggrieved by the seniority list, he should make his objection within a period of 15 days. It is also not in dispute that pursuant to the circulation of the said seniority list, the petitioner herein had made representation dated 17.9.98 and urged before the Corporation that he had also raised objection to the earlier daft seniority list of 21.5.97. He also pointed out that the respondent No.3 was absorbed as Junior Clerk in the Corporation from 1.2.84 and that he was directly recruited as Junior Clerk on 13.1.83. He, therefore,

objected to the respondent No.3 being shown to have been recruited with effect from 1.9.79 in the said seniority list. It is the case of the petitioner that the said representation of the petitioner was not replied to and he was, therefore, required to approach this Court by filing the present petition.

8. From the above factual background, it can be seen that the respondent No.3 herein is given seniority in the cadre of Junior Clerk with effect from 1.9.79. It is this action of the respondent No.2 which has aggrieved the petitioner and he is therefore challenging the said action in the present petition.

9. Having heard the learned advocates for the parties and having perused the material on record, it appears that the question of how to govern the seniority of the deputationists upon ultimate absorption in the Corporation was already gone into by the learned single Judge in the earlier round of litigation. As noted above, the learned Judge had already concluded that the deputationists who were ordered to be absorbed with effect from 1.9.79 could not have claimed seniority from the earlier date. The learned Judge had come to the conclusion, in the facts of the case, that when the Government had passed order on 23rd May 1980 to absorb the deputationists permanently in the Corporation's service with effect from 1.9.79 that would be the correct date to reckon their seniority. This conclusion was also on the basis of the background of the option form pursuant to which the Government servants had opted for absorption in the Corporation's service which also indicated that they would be absorbed with effect from 1.9.79. In the present case, I find that the respondent No.3 had not opted for being absorbed in the service of the Corporation in 1979 when other Government servants had so opted. As noted earlier, it was only after the Corporation indicated to the respondent No.3 that his desire for being repatriated to the Government service may not be fulfilled since the Government may not have the post to permit him to be repatriated, that the respondent No.3 indicated his choice for being absorbed in the respondent No.2 Corporation. This was done, as noted above, on 29th May 1980. Pursuant to this consent of the respondent No.3, the State Government eventually along with other optees directed that the respondent No.3 and 27 other persons would be absorbed permanently in the Corporation's service with effect from 1.2.84. The order absorbing the respondent No.3 upon his consent was passed on 1.2.84. In view of the decision of the learned single Judge, as noted above, it would not be possible to grant

the date of 1.9.79 to the respondent No.3 for counting his seniority in the cadre of Junior Clerk. At the cost of repetition, I would like to state that when the respondent No.3 himself had not opted for being absorbed in the service of the Corporation, it was not possible for the respondent No.2 to grant him seniority from 1.9.79.

10. In the result, I find that date of seniority of respondent No.3 reckoning from 1.9.79 in the impugned seniority list dated 11.9.98 is illegal and unlawful and the respondent No.3 would be entitled to count his services in the cadre of Junior Clerk only with effect from 1.2.84. The respondent No.2 is accordingly directed to carry out the correction in the impugned seniority list dated 11.9.98 with all consequential effect thereof. The other prayer of the petitioner for being considered for promotion to the higher cadres is premature at this stage and only upon the exercise as directed by this Court, it would be possible for the Corporation to come to the conclusion regarding further consequential effect.

11. In the result, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)